

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KRAFT FOODS GLOBAL, INC., THE)	
KELLOGG COMPANY, GENERAL)	
MILLS, INC., and NESTLÉ USA,)	
INC.,)	
)	No. 1:11-cv-08808
Plaintiffs,)	
)	Judge Charles R. Norgle
v.)	
)	
UNITED EGG PRODUCERS, INC.,)	
UNITED STATES EGG)	
MARKETERS, INC., CAL-MAINE)	
FOODS, INC., MICHAEL FOODS,)	
INC., and ROSE ACRE FARMS, INC.)	
)	
Defendants.)	

**DEFENDANTS' MOTION *IN LIMINE* FOR
ONE APPEARANCE PER WITNESS TESTIFYING LIVE**

Defendants United Egg Producers, Inc. ("UEP"), United States Egg Marketers, Inc. ("USEM"), Cal-Maine Foods, Inc. ("Cal-Maine"), Michael Foods, Inc. ("MFT"), and Rose Acre Farms, Inc. ("Rose Acre") respectfully move *in limine* for a Court order requiring one appearance per witness for in-person testimony by witnesses identified by both Plaintiffs and Defendants to testify live.¹

Plaintiffs and Defendants both identified nine people that they expect to testify live at trial, all of whom are outside the subpoena power of the Court:

¹ Defendants met and conferred with Plaintiffs on this issue. Plaintiffs appeared receptive to consider this issue on a witness-by-witness basis, but Plaintiffs were not willing to agree to a single appearance at trial for all witnesses, and Plaintiffs have not identified which witnesses to whom they would agree.

Witness	Affiliated Organization	Residence
Jeff Armstrong	California State University (former UEP Scientific Advisory Committee)	California
Gregory Hinton	Rose Acre Farms	Indiana
Marcus Rust	Rose Acre Farms	Indiana
Dolph Baker	Cal-Maine Foods, Inc.	Mississippi
Jeff Hardin	Cal-Maine Foods, Inc.	Mississippi
Steve Storm	Cal-Maine Foods, Inc. (former)	Texas
Ken Paramore	Cal-Maine Foods, Inc. (former)	North Carolina
Terry Baker	Michael Foods, Inc.	Minnesota
Gregg Ostrander	Michael Foods, Inc. (former)	Florida

Any person so identified who testifies in Plaintiffs' case should not be required to travel back to Chicago to testify in Defendants' case. This Court has authority to order as much under Federal Rule of Evidence 611(b), which grants the Court authority to allow cross examination "into additional matters as if on direct examination."

Allowing these nine witnesses to appear once encourages efficiency, minimizes burdens to the witnesses, and allows for a more streamlined presentation of the evidence in what the parties expect to be a five-week trial with dozens of witnesses. This is particularly true in light of the ongoing concerns for persons' health and safety due to the lingering COVID-19 pandemic.

First, requiring multiple appearances imposes an unreasonable burden on these people, all of whom live out-of-state. *See Agrigenetics, Inc. v. Pioneer Hi-Bred Int'l Inc.*, No. 1:08-CV-00802-TWP, 2011 WL 52451, at *1 (S.D. Ind. Jan. 6, 2011) (holding it would be "unfair" to require out-of-state witnesses identified as witnesses

by two parties to appear twice during a two-week trial and allowing second party the “opportunity to question . . . witnesses beyond the scope of the initial direct examination” of the other party). With respect to the five persons currently employed by Defendants Rose Acre, Cal-Maine, and MFI, Defendants have agreed to make them available for testimony in Plaintiffs’ case even though these people are outside the Court’s subpoena power. Requiring multiple appearances by them would be disruptive as they are high-level executives within their respective companies.² With respect to former employees, because they are outside the subpoena power of the Court, there is no way for Defendants to guarantee that they will appear voluntarily at trial a second time, which would seriously prejudice Defendants.³

Beyond causing undue burdens on witnesses, requiring a single appearance minimizes the health and safety risks associated with COVID-19. *See* N.D. Ill. Fourth Amended General Order 21-0027 (Jul. 5, 2022) (suspending local rules because of the “ongoing public health emergency arising from the COVID-19 pandemic . . . and to minimize unnecessary traffic within the U.S. Courthouses”). Every one of the nine

² Gregory Hinton and Marcus Rust are Vice President and CEO, respectively, of Rose Acre; Dolph Baker is CEO and Chairman of the Board of Directors of Cal-Maine; and Jeff Hardin is Senior Vice President of Cal-Maine.

³ In addition, certain witnesses may have limited availability to testify and as a practical matter will not be available to appear twice. For example, non-party witness Dr. Armstrong is the President of California Polytechnic State University and, due to his busy end-of-year schedule, only available to testify on November 9 or 10, 2022. Defendants anticipate working with Plaintiffs to accommodate this witness’s schedule but wanted to make the Court aware of Dr. Armstrong’s limited availability.

witnesses is of an age that increases their risk of hospitalization and death from exposure.⁴

Defendants therefore request that they be allowed to question these witnesses when they appear in Plaintiffs' case beyond the scope of Plaintiffs' direct examination to allow these to only appear at trial only once. Defendants respectfully request this Court grant Defendants' motion *in limine*.

Dated: August 26, 2022

Respectfully submitted,

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⁴ All of these nine witnesses are at least fifty years old. According to the CDC, when compared to adults under thirty, people aged fifty to sixty-four are three times more likely to be hospitalized by COVID-19 and twenty-five times more likely to die from COVID-19 than an adult aged 18-29. *Risk for COVID-19 Infection, Hospitalization, and Death by Age Group*, CDC (Jul. 29, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html>. The risk of hospitalization and death is even higher for those sixty-five and older. *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants registered to receive service in this action.

/s/ Patrick M. Otlewski

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